

December 4, 2017

Dear Minister Hoskins,

I have been a dentist since 2001 and was an elected Council member of the Royal College of Dental Surgeons of Ontario (the **RCDSO**) from 2007-2012, serving as Vice President from January 2011 until I resigned from Council in March 2012. I have been made aware of the letter prepared in the name of 16 present and former staff and sent to you dated October 30th, 2017 (the **Letter**), in which these individuals expressed their concerns about conditions at the RCDSO. I add my voice to the chorus requesting that you exercise your power under s. 5.0.1 of the *Regulated Health Professions Act* to recommend that a Supervisor be appointed for the RCDSO.

I will address each of the issues raised in the Letter in turn, but first wish to note that they are not new. On April 16, 2012, I sent a letter by both email and registered mail to Suzanne McGurn, the Assistant Deputy Minister of Health at the time, describing the circumstances leading to my resignation and outlining numerous departures from governance best practices at the RCDSO. I am sharing certain details below because to do so I feel is in the public interest.

Mistreatment of staff

In my experience, RCDSO Council was largely insulated from HR issues within the RCDSO, and from what I saw especially while a Vice President, this was in my opinion by the Registrar's design. While Council members work with RCDSO staff on committees, the interaction between them is polite but distant. While I was on Council, I learned that the Registrar had warned staff to avoid me because I was a "troublemaker". It therefore does not surprise me to read that staff are threatened with termination if they confide in Councillors.

Sexual harassment is quite another thing. Female staff members of the RCDSO have shared their experiences in this regard with me, prompting me to describe the culture there as something out of *Mad Men* in a July 5, 2017 Toronto Star article. I can also personally attest to inappropriate touching at Council meetings that led me to request a "greeting by handshake only" policy.

Financial mismanagement

Here are some examples of what I considered during my time on Council as being financial management that did not meet best practices or that in my opinion at the time constituted financial irregularities:

- As a general comment, I observed very significant legal expenses. For example, in one instance I noted a budget line item of \$900,000 and asked for details both from a risk management perspective but also a financial management perspective. The request was rebuffed.

- On a related item, the College had no RFP policy, and there were significant expenditures on consultants (as well as lawyers). For example consultancy fees of \$800,000 to develop a performance measurement system for staff that I understand was abandoned after just a few years.
- Based on my experience, for such amounts other organizations would have had a procurement policy or process and better financial controls. My questions on such matters were rebuffed and sometimes ridiculed.
- Though compensation costs for the RCDSO are publicly available and Council may have been advised of the total amount of annual bonus payments made to staff while I was there, the Registrar made it clear that the specifics of staff compensation, including merit increases and bonuses, were none of our business. However, requests for oversight at a general level or at least a more formal compensation or bonus plan (as opposed to what appeared to be the Registrar's sole discretion) were also rebuffed.

The potential for abuse in such circumstances is obvious, and what I understand to be budgetary issues at the RCDSO aren't a surprise as a consequence.

Most concerning, the President negotiated the Registrar's contract with him directly and Council was not allowed to know the terms. This was also problematic because in my experience the Registrar did not remove himself sufficiently from the election of the President or other members of the Executive Committee. Quite the contrary, I saw him to be quite directly involved in the elections process. The Registrar is also entitled to be considered for annual performance pay that Council is expected to endorse despite having no understanding of the value of the Registrar's compensation package, which includes expenses and a car allowance.

During my role as Vice President and member on the Finance Committee, I sought numerous times to receive information regarding major expenditures and to understand what if any financial controls were in place to deal with smaller individual items which in aggregate represented substantial budgets. These were met by refusals to provide details and without explanation of any financial or budgetary controls. In my opinion, the only explanation is that normal financial and budgetary controls aren't in place at the RCDSO and in effect the RCDSO's budget appears to be at the Registrar's discretion, or to a much greater extent than should be the case. For example it was through the Finance Committee that I was first made aware that the RCDSO has an unfunded pension for RCDSO employees. I don't believe this is something known by Ontario dentists, and certainly I was unaware of this – even when I was sitting on Council. Also, it appeared to me that there is no budgetary process for entertainment expenses (as an example), which were significant. Also, it seemed to me that international and out of province business travel was much more extensive than the RCDSO's mandate would justify. A key issue that I mentioned again and again (including in my resignation letter) was that given the RCDSO's budget and the importance of transparency and good governance there ought to have been a Treasurer, or somebody seized with a financial management role, other than the Registrar. All of these points and inquiries were rebuffed.

With such financial controls (or lack thereof), the RCDSO's current financial difficulties should come as no surprise, but it is the dentists of Ontario who will have to make up the shortfall. I agree with the signatories of the Letter that a forensic audit must be conducted to identify and remedy any fiscal oversight issues at the RCDSO.

Willful blindness

The whistleblowers are correct that Council members accept whatever the Registrar tells them and are unlikely to oppose him. To be fair, however, Council and the Executive Committee in my view and experience at the time often lacked adequate information to properly perform their functions.

That said, I had heard from RCDSO staff that the Registrar in my view has offered perks and rewards to cooperative Council members and others (such as tickets, car service and dinners) and that, like all dentists, many elected members of Council are afraid to challenge the Registrar for fear of reprisals from a professional regulation perspective. I believe that it is quite well known in the profession that when I spoke up regarding some of these issues, and some others such as past president Dr. Thomas McKean, Dr. Jones, then the RCDSO hired outside counsel to make claims of defamation and threaten expensive legal proceedings. I believe that in part because of the fear of such retaliation, most Councillors get with the program sooner or later. This impedes debate and prevents effective governance and removes much needed checks and balances.

Though I still find it hard to believe no other Council member voted for something as objectively uncontroversial as using best practices in evaluating a CEO and knowing how much that employee earns, I have no trouble believing the Executive Committee and Council voted against conducting a workplace assessment requested by Rene Brewer after she was fired as Director of the Professional Liability Program (PLP), despite knowing of her intention to sue if they refused. As the Letter notes, the Registrar controls the Executive Committee and Council, not the reverse. If the Registrar didn't want a workplace assessment, Council wouldn't impose one on him based on my experience, never mind that an independent review may have identified HR issues of which the Councillors need to be aware or that may have exonerated the Registrar entirely. Either way, it would have saved a ton of money. This kind of decision-making defies common sense but is typical of the way Council works. RCDSO staff are justified in concluding they can't count on Council to help them, at least based on how governance was practiced when I was part of Council.

Absence of independent legal advice

The Letter identifies one of the main contributors to RCDSO Council's ignorance and inertia: its lack of access to or appetite for truly independent legal advice.

Because most Council members have no legal training, they defer to the Registrar, a lawyer, on most legal issues. To the extent outside legal advice is required, the Registrar carefully controls when and from whom it is received. My suggestion that Council seek out subject-matter experts for important matters was met with outright hostility and that this advice be independent of the Registrar or of the RCDSO more generally. When I obtained legal opinions at my own expense that did not accord with the Registrar's agenda, they were dismissed in favour of those provided by friends of the Registrar, e.g. RCDSO General Counsel Alan Bromstein, whose relationship with the Registrar goes back to their days at Shibley Righton McCutcheon in the mid-1970s. In my experience, Bromstein does what the Registrar wants rather than what is in the organization's best interests.

When the Registrar needs to retain external counsel to advise on matters for which Bromstein is not qualified to opine, he typically retains lawyers with whom he has close personal and professional ties. A case in point is the RCDSO's retainer of a lawyer who does regulatory work for the College in Brewer's action, in which its interests and those of the Registrar may not be aligned. In the circumstances, it would have been best for the RCDSO to retain someone completely unrelated to the Registrar or the College, but the Executive Committee no doubt relied on the Registrar's recommendation in selecting defence counsel.

Public protection

I was not involved in ADR during my time on RCDSO Council, but I did chair a panel of the Complaints Committee for a number of years and cannot understand how any panel can bless settlement of a matter unless it can satisfy itself there is no issue of patient safety and the resolution is in the public interest. Rather than changing the template letter to remove references to its statutory duties, ICRC should have insisted that panels receive enough information to properly perform their function even in files that are resolved on consent.

As a practising dentist, I am also appalled at the RCDSO's mishandling of the infection prevention and control (IPAC) issue. I would encourage you to review a copy of the letter from the Chief Medical Officer of Health directing all health profession college's Registrars to advise their members of Ontario Public Health's (OPH) intention to enforce its IPAC guidelines. Despite receipt of this directive in October, 2016, the RCDSO only advised dentists of the new, more rigorous standards by mass email dated July 4, 2017. Between October 2016 and July 2017, dental patients in Ontario were exposed to unnecessary risk due to the RCDSO's unexplained and negligent delay in circulating these requirements. Part of the current status quo at the RCDSO, in my opinion, is that access to information is centralized with the Registrar and in large part controlled by the Registrar. If the governance structure and processes were different then there might be greater checks and balances in place that might help avoid this type of situation. Also, one wonders how this delay could have happened, and once it is discovered what steps were taken to ensure it wouldn't happen again.

No explanation has been provided by the RCDSO to Ontario dentists. Also, I tried to make inquiries in this regard and received no response.

I learned that RCDSO staff members were extremely concerned with this lack of action, the instructions the Ministry had provided and wished for immediate steps to be taken and communication to its members. I learned further that RCDSO staff members were specifically instructed by the Registrar not to respond to me, my questions on this topic or to engage with me whatsoever. In my view any member should be entitled to a response to a matter related to protection of the public. The lack of response and communication could be reasonably perceived, in my opinion, as a cover up of a serious mistake or worse. Furthermore, instructing RCDSO staff to not respond to certain members singles the member out unfairly, and also further removes appropriate checks and balances.

Conflicts of interest

Before the RCDSO informed members of OPH's requirements, several dental offices were shut down by local public health authorities. This triggered at least two class actions by patients of those practices for failure to adhere to applicable IPAC guidelines and causing them to undergo testing for potential exposure to infectious diseases. Ironically, those class actions are being defended by the RCDSO through PLP. Dentists in Ontario have every reason to expect that the defence and possible settlement of these class actions will cost the PLP, and by extension them, millions.

The fact that the regulator also provides malpractice insurance to Ontario dentists has always been an issue. Despite the RCDSO's assurances to the contrary, from what dentists have told me, many dentists are afraid to call PLP for fear the Registrar will gain access to their confidential information and that this may be used for discipline purposes. That the Registrar is now essentially running PLP and plans to convert it into what sounds like a no-fault scheme without consulting members is unconscionable and should not be allowed. It was my experience as well when on Council that there were no information barriers between PLP and the RCDSO. The optics and potential for abuse resulting from what in my opinion is a governance flaw, in my view are very negative, and can undermine protection of the public.

Interference in regulatory processes

I was especially impressed by the whistleblowers' courage in articulating what many know but don't dare say aloud, namely that the RCDSO Registrar improperly influences the outcome of regulatory processes. The Registrar is supposed to receive complaints and, in some cases, order investigations into potential professional misconduct, but he is not supposed to be intimately involved in the resolution of those matters. As chair of a panel of the Complaints Committee for six years, I witnessed the Registrar inserting himself into panel deliberations.

Even after a panel considering a referral to discipline had received a prosecutorial assessment from outside counsel, the Registrar would sometimes appear at the panel meeting, uninvited and unannounced, to give his opinion. I remember a billing fraud matter in which I challenged the need to hear from the Registrar. I voted to sanction the member but was overruled by my colleagues, who decided to take no further action on the basis of the Registrar's representations. I put my objection on the record and believe to this day the result was not in the best interests of the public.

As a dentist who takes pride in my work, it gives me no pleasure to ask government to assume responsibility for regulating my profession. Unfortunately, I agree with the writers of the Letter that there is no other reasonable path forward. A Supervisor needs to be appointed for the RCDSO pursuant to the *Regulated Health Professions Act*, for the good of both patients and dentists throughout the province.

I am available to answer any questions you may have.

Sincerely,

Natalie Archer B.Sc., D.D.S., F.I.C.D., F.P.F.A., I.A.D.F.E